UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: January 27, 2023

CBCA 7409

ROOKER COWETA LLC,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Gordon Griffin and Sean Belanger of Holland & Knight LLP, Washington, DC, counsel for Appellant.

Elin M. Dugan, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

Before Board Judges **RUSSELL**, **GOODMAN**, and **CHADWICK**.

CHADWICK, Board Judge.

The parties disagree about how to read a lease. The lessor and appellant, Rooker Coweta LLC (Rooker), asserts that it used the wrong tax base to calculate real estate tax adjustments for a decade and is owed $159,382.96 for the six years preceding its certified claim. The lessee and respondent, Department of Agriculture (USDA), argues that the lease is ambiguous and that we should construe it against Rooker and deny relief. The parties agree on the material facts and submitted the appeal on the written record. We agree with Rooker and grant the appeal.

Facts

The parties executed the lease, for space in a building in Newnan, Georgia, in December 2007, for occupancy in early 2009. The following clause is at issue.

> **REAL ESTATE TAX ADJUSTMENT:**
>
> In accordance with Section A [of the solicitation,] "Tax Adjustment", the percentage of Government occupancy is established as 100%. The Government shall pay annual lump-sum payments for Real Estate Taxes over the base year. The base for calculating real estate tax adjustments for the leased premises shall be the first fully assessed year. If the Government occupies the premises in 2009, and the first fully assessed year is 2010, then the first year of increase over the first fully assessed year is not until 2011.

The solicitation, which was incorporated in the lease, had stated in relevant part:

> Base year taxes . . . are 1) the real estate taxes for the first 12-month period coincident with full assessment (the taxing jurisdiction has considered all contemplated improvements to the assessed property in the valuation of the same) or 2) may be *an amount negotiated by the parties that reflects an agreed upon base for a fully assessed value of the property*.

(Emphasis added.)

The dispute centers on whether the words of the solicitation italicized above are operative here. In its proposal (standard form 1364), which was incorporated in the lease, Rooker included $1.40 per square foot "for base year taxes," which would equate to a tax base of $169,628.20 for the leased 121,163 square feet. Rooker used that dollar amount as the base for rent adjustments under the Real Estate Tax Adjustment clause every year from 2011 through 2020. The parties agree that 2010 was "the first fully assessed year" within the meaning of the lease and that the applicable taxes for that year were $111,695.49.

In March 2022, Rooker submitted a certified claim for $159,382.96 in alleged undercharges for real estate taxes dating back six years, to 2016. Rooker quantified the claim by substituting $111,695.49 (the 2010 real estate taxes) for $169,628.20 (the tax amount from form 1364) in the relevant tax adjustment calculations. USDA denied the claim in May 2022. Rooker timely appealed to the Board. The parties required no discovery and submitted the case on the record under Board Rule 19 (48 CFR 6101.19 (2021)). Upon inquiry from the Board, USDA confirmed that it "does not dispute the calculation of quantum presented in the appellant's Certified Claim," should we agree with Rooker that the

correct tax base is $111,695.49, rather than, as USDA maintains, a "negotiated" amount of $169,628.20, based on form 1364. We accept USDA's quantum stipulation (which is the only evidence in the record that Rooker, in fact, *paid* the real estate taxes upon which it based its rent adjustment submissions under the lease) per Rule 9(a)(1)(v).

Discussion

We agree with Rooker that the lease "expressly requires that the parties calculate the Real Estate Tax Base through the full assessment method" rather than by using a negotiated tax base. The fact that the amount projected "for base year taxes" in the 2007 proposal differed from the amount of taxes for the "first fully assessed year," 2010, does not create an ambiguity in the lease. The parties correctly anticipated that occupancy would occur in 2009. The tax amount per square foot shown on form 1364 was an estimate for the "base year" of the lease—2009 to 2010. The "base" for tax adjustments is a different year, calendar 2010. The rent breakdown on form 1364 and the Real Estate Tax Adjustment clause are separate parts of the lease and use the word "base" in different ways. Accordingly, the "base" amount under the adjustment clause is clearly $111,695.49, the taxes for 2010, not the amount derived from form 1364 for the "base year" of the lease. We see no ambiguity at all.

USDA argues that the lease is ambiguous because form 1364 "was not just a proposal document" but was expressly incorporated in the lease. "Accordingly," USDA writes, "there are two parts of the lease that conflict with each other" with regard to the amount of "base year taxes." As just explained, we see no such conflict. The rent as proposed in 2007 was fixed for the "base year" and could be adjusted in future years based on taxes paid for the "first fully assessed year," which began later and ended later than the base year of the lease. The parties did not "negotiate" a different tax base. *See ASP Denver, LLC v. General Services Administration*, CBCA 2618, et al., 15-1 BCA ¶ 35,850, at 175,302 (2014) (ruling on similar facts that "nothing establishes that the parties mutually intended to negotiate a fixed base tax rate at the outset and prior to full assessment" and rejecting the lessor's argument that "the rate it proposed, which was not actively challenged . . . , effectively became a 'negotiated' base year tax rate"), *aff'd*, 651 F. App'x 999 (Fed. Cir. 2016).

USDA further argues that, given the alleged ambiguity, we should consider the parties' conduct to aid us in interpreting the lease. "Because the [lease] is unambiguous," however, "we follow the plain meaning without considering extrinsic evidence or related arguments." *P.K. Management Group, Inc. v. Secretary of Housing & Urban Development*, 987 F.3d 1030, 1033 (Fed. Cir. 2021); *accord JBG/Federal Center, L.L.C. v. General Services Administration*, CBCA 5506, et al., 18-1 BCA ¶ 37,019, at 180,276 ("Pre-dispute conduct can be considered . . . only if a provision is ambiguous."), *motion for reconsideration denied*, 18-1 BCA ¶ 37,087.

Decision

The appeal is **GRANTED** in the amount of $159,382.96 with interest under 41 U.S.C. § 7109 (2018) to run from March 17, 2022, until the payment date.

Kyle Chadwick
KYLE CHADWICK
Board Judge

We concur:

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge